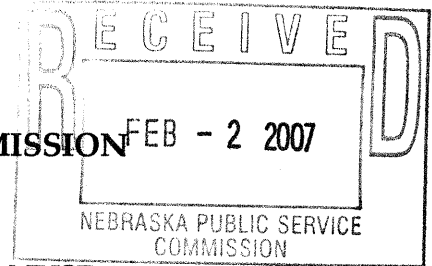


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION



In the Matter of the Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund.

Application No. NUSF-1

**POST-HEARING REPLY BRIEF OF UNITED TELEPHONE
COMPANY OF THE WEST d/b/a EMBARQ**

1. United Telephone Company of the West d/b/a Embarq hereby files its Reply Brief in this matter. Embarq will not restate the arguments it made in its initial brief, other than to say that the law, rules and orders that Embarq cited in the initial brief provide the Commission with sufficient jurisdiction and authority to require interconnected VoIP providers to contribute to the NUSF. In fact, Nebraska law directs that the Commission "shall require every telecommunications company to contribute to any universal service mechanism established by the commission pursuant to state law."¹ As demonstrated in Embarq's initial brief, interconnected VoIP providers are telecommunications companies that are subject to Neb. Rev. Stat. § 86-324(2)(d).

2. The Commission need only find that interconnected VoIP providers are "telecommunications companies," under Nebraska law. Because there is no federal preemption, the Commission is free to require interconnected VoIP providers to contribute to the NUSF without classifying the VoIP services they provide as

¹ Neb. Rev. Stat. § 86-324(2)(d)(*emphasis added*).

“telecommunications services,” under the Act. In addition, under recent precedent, the Commission could make a determination that interconnected VoIP service is a “telecommunications service,” as defined in federal law.

3. It has been argued in this docket that interconnected VoIP providers do not offer “telecommunications service,” as defined by the Act, and therefore this Commission cannot require providers to contribute to the NUSF.² However, the FCC has not classified interconnected VoIP service as either information or telecommunications service. Therefore, there is no preemption. In fact, the United States District Court for the Eastern District of Missouri recently held that the Missouri commission was not preempted from classifying VoIP as a telecommunications service.³

4. In *Comcast IP*, the court recognized each of the FCC orders that have involved VoIP, including the *Vonage Preemption Order*⁴ and the *Contribution Order*,⁵ and still determined that the Missouri PSC was not preempted by the FCC.⁶ Absent an FCC proclamation that interconnected VoIP service may not be regulated by the states as a telecommunications service, the Commission is free to require providers to contribute to the NUSF.

² See *Qwest Corporation's Post-Hearing Brief*.

³ *Comcast IP Phone of Missouri v. Missouri PSC*, Case No. 06-4233-CV-C-NKL, 2007 U.S. Dist. LEXIS 3628. See Exhibit 1.

⁴ *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Util. Comm'n*, WC Docket No. 03-211, FCC 04-267 (FCC rel. Nov. 12, 2004).

⁵ *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 06-94, footnote 166 (FCC rel. June 27, 2006).

⁶ *Comcast IP*, 2007 U.S. Dist. LEXIS 3628, at p. 12-16.

5. The Commission is authorized by Nebraska law to require interconnecting VoIP providers to contribute to the NUSF and it is not preempted by federal law from imposing such a requirement. Embarq therefore supports the Commission's proposal to required interconnected VoIP providers to contribute to the NUSF.

Respectfully submitted this 31st day of January, 2007.

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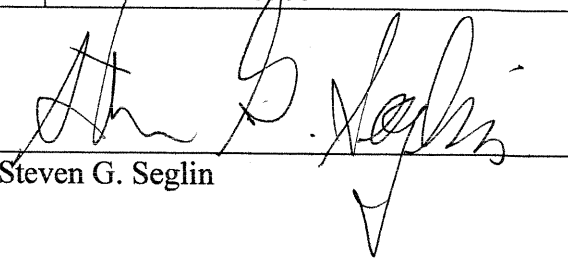
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Post-Hearing Brief of United Telephone Company of the West d/b/a Embarq was sent via regular United States mail, postage prepaid, on this 2nd day of February, 2007, addressed as shown below, to the following:

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